

B 104  
(Rev. 2/92)**ADVERSARY PROCEEDING COVER SHEET**

(Instructions on Reverse)

ADVERSARY PROCEEDING NUMBER  
(Court Use Only)**PLAINTIFFS**Clarence Burgess Owens and  
Josephine Cynthia Owens  
1430 Telegraph Road  
West Chester, PA 19380**DEFENDANTS**New York State Department of Taxation and  
Finance  
Bankruptcy Section  
P.O. Box 5300  
Albany, New York 12205-0300**ATTORNEYS (Firm Name, Address, and Telephone No.)**Michael G. Louis, Esquire  
17 West Miner Street-PO Box 660  
West Cheser, Pennsylvania 19381-0660**ATTORNEYS (If Known)****PARTY** (Check one box only)☐ 1 U.S. PLAINTIFF☐ 2 U.S. DEFENDANT☒ 3 U.S. NOT A PARTY**CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)**

Complaint to determine dischargeability of State tax debts.

**NATURE OF SUIT**

(Check the one most appropriate box only.)

☐ 454 To Recover Money or Property☐ 435 To Determine Validity, Priority, or  
Extent of a Lien or Other Interest in  
Property☐ 458 To obtain approval for the sale of both  
the interest of the estate and of a co-  
owner in property☐ 424 To object or to revoke a discharge  
11 U.S.C. § 727☐ 455 To revoke an order of confirmation  
of a Chap. 11, Chap. 12, or Chap. 13 Plan  
☒ 426 To determine the dischargeability  
of a debt 11 U.S.C. § 523☐ 434 To obtain an injunction or other  
equitable relief☐ 457 To subordinate any allowed claim  
or interest except where such  
subordination is provided in a plan☐ 456 To obtain a declaratory  
judgment relating to any of  
foregoing causes of action☐ 459 To determine a claim or cause of  
action removed to a bankruptcy  
court☐ 498 Other (specify)**ORIGIN OF  
PROCEEDINGS**

(Check one box only.)

☒ 1 Original  
Proceeding☐ 2 Removed  
Proceeding☐ 4 Reinstated  
or Reopened☐ 5 Transferred  
from Another  
Bankruptcy  
Court☐ CHECK IF THIS IS A CLASS  
ACTION UNDER F.R.C.P. 23**DEMAND**  
\$**OTHER RELIEF SOUGHT**☐ JURY DEMAND

Check only if demanded in complaint

**BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES****NAME OF DEBTOR**

Clarence B. Owens and Josephine C. Owens

**BANKRUPTCY CASE NO.**

04-12259

**DISTRICT IN WHICH CASE IS PENDING**

Eastern District of Pennsylvania

**DIVISIONAL OFFICE**

Philadelphia

**NAME OF JUDGE**

Honorable Judge Fox

**RELATED ADVERSARY PROCEEDING (IF ANY)****PLAINTIFF****DEFENDANT****ADVERSARY PROCEEDING NO.****DISTRICT****DIVISIONAL OFFICE****NAME OF JUDGE****FILING  
FEE** (Check one box only.)☐ FEE ATTACHED☐ FEE NOT REQUIRED☐ FEE IS DEFERRED**DATE**

1/5/05

**PRINT NAME**

Michael G. Louis, Esquire

**SIGNATURE OF ATTORNEY (OR PLAINTIFF)***Michael G. Louis*

B 250A  
(8/96)

# United States Bankruptcy Court

Eastern District Of Pennsylvania

In re Clarence B. Owens and  
~~Josephine Cynthia Owens~~, )  
Debtor ) Case No. 04-12259  
Clarence Burgess Owens and )  
Josephine C. Owens ) Chapter 13  
Plaintiff )  
New York State Department )  
v. of Taxation and Finance )  
Defendant ) Adv. Proc. No. \_\_\_\_\_

## SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Address of Clerk U.S. Bankruptcy Court  
Robert N.C. Nix Building-900 Market Street  
Suite 400  
Philadelphia, PA 19107-4299

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney  
Michael G. Louis, Esquire  
17 West Miner Street-PO Box 660  
West Chester, Pennsylvania 19381-0660

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

**IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**

\_\_\_\_\_  
Clerk of the Bankruptcy Court

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Deputy Clerk

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: CLARENCE BURGESS OWENS and JOSEPHINE OWENS,	: CHAPTER 13 : NO. 04-12259 (BIF)
Debtors	: :
CLARENCE BURGESS OWENS and JOSEPHINE C. OWENS	: ADVERSARY PRO. NO. :
Plaintiffs	:
vs.	:
NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE	: :
Defendants	: :

## COMPLAINT TO DETERMINE DISCHARGEABILITY OF STATE TAX DEBTS

1. This is an adversary proceeding to determine the dischargeability of a debt pursuant to Bankruptcy Rules 4007 and 7001(6).

2. This Court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2)(I). Venue is proper pursuant to 28 U.S.C. § 1334 and 1409(a).

3. Plaintiffs are Clarence Burgess Owens and Josephine C. Owens, husband and wife, debtors in the above-captioned matter.

4. Defendants are New York State Department of Taxation and Finance (“NYSD”), the creditors in this action.

5. NYSD originally filed a Proof of Claim for income tax liabilities against Clarence Burgess Owens and Josephine C. Owens on or about April 5, 2004. The amount claimed in the Proof of Claim totaled \$35,118.58 as a secured liabilities claim for the tax years 1988 and 1991. This amount included penalty and interest for each liability computed to February 18, 2004. A true and correct copy of said Proof of Claim is attached hereto, made a part hereof and marked Exhibit "A".

6. NYSD filed an Amended Proof of Claim for the same income tax liabilities against Clarence Burgess Owens and Josephine C. Owens on or about September 24, 2004. This Claim amends and supercedes the previous claim dated April 5, 2004. The amount claimed in the Proof of Claim totals \$35,118.58 and is now listed as a general unsecured liabilities claim for the same tax years of 1988 and 1991. This amount includes penalty and interest for each liability computed to February 18, 2004. A true and correct copy of said Proof of Claim is attached hereto, made a part hereof and marked Exhibit "B".

7. NYSD has no liens on any property owned by Clarence Burgess Owens and Josephine C. Owens to support its Proof of Claim.

8. Thus, NYSD has filed no secured Proof of Claim under § 506 of the United States Bankruptcy Code, 11 U.S.C.

9. The tax return due dates for NYSD are more than 3 years before the filing of the bankruptcy petition and the tax assessments made are more than 240 days prior to the filing of the bankruptcy petition in the above-referenced matter.

10. Thus, the entire amended Proof of Claim for NYSD is not entitled to priority status under § 507(a)(8)(A) of the United States Bankruptcy Code, 11 U.S.C. In addition, NYSD amended its Proof of Claim listing the entire amount as a general unsecured liabilities Claim.

11. NYSD consented to this Court's jurisdiction with respect to the claim in the above-referenced matter when it filed its Proof of Claim. *Gardner v. New Jersey*, 329 U.S 565 (1947) and *In re Straight*, 143 F.3d 1387 (10<sup>th</sup> Cir. 1998).

12. This is a core proceeding.

**WHEREFORE**, Debtors' respectfully request that judgment be entered in their favor and that an Order be entered identifying the tax claims of the New York State Department of Taxation and Finance for the years 1988 and 1991 to be nonpriority claims subject to discharge.

MacELREE HARVEY, LTD.

By: Michael G. Louis  
Michael G. Louis, Esquire  
Attorney for Debtors



New York State Department of  
**Taxation and Finance**

Bankruptcy Section  
P O Box 5300  
Albany NY 12205-0300  
(518) 457-3160

Statement date: 4/5/2004

Case number: 04-12259 BIF  
Refer to this number for inquiries

Total claim amount: \$35,118.58

Taxpayer ID#: 0794-2  
8479-4

**Pre-Petition Proof of Claim**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF PENNSYLVANIA  
ROBERT C. NIX COURTHOUSE  
900 MARKET STREET  
PHILADELPHIA, PA 19107

This is a statement of tax liabilities for OWENS-BURGESS and OWENS-JOSEPHINE. Penalty and interest for each liability is computed to 2/18/2004.

**Secured Liabilities**

Tax Type	Period End	Notice Number	Tax	Penalty	Interest	Total	Type	Warrant Date	Cnty
INCOME	12/31/1988	L-008356682-8	0.00	5,246.76	23,441.62	28,688.38	ACT	05/20/1994	ALBA
INCOME	12/31/1991	L-008478820-8	1,824.00	918.80	3,687.40	6,430.20	ACT	05/20/1994	ALBA
					Total \$	35,118.58			

Current Annual Interest Rates by Tax Type: Personal Income - 6%  
Liability Type Descriptions: ACT - Actual Return Filed

*Marlene Costello*

" A "



New York State Department of  
**Taxation and Finance**

Bankruptcy Section  
P O Box 5300  
Albany NY 12205-0300

(518) 457-3160

Statement date: 9/21/2004

Amendment: 1st

Case number: 04-12259 BIF

Refer to this number for inquiries

Total claim amount: \$35,118.58

Taxpayer ID#: 0794

8479

**Pre-Petition Proof of Claim**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF PENNSYLVANIA  
ROBERT C. NIX COURTHOUSE  
900 MARKET STREET  
PHILADELPHIA, PA 19107

This is a statement of tax liabilities for OWENS-BURGESS and OWENS-JOSEPHINE. Penalty and interest for each liability is computed to 2/18/2004.

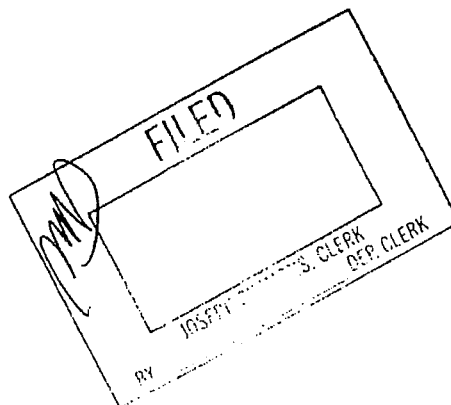
**General Unsecured Liabilities**

Tax Type	Period End	Notice Number	Tax	Penalty	Interest	Total	Type
INCOME	12/31/1988	L-008356682-8	0.00	5,246.76	23,441.62	28,688.38	ACT
INCOME	12/31/1991	L-008478820-8	1,824.00	918.80	3,687.40	6,430.20	ACT
					Total \$	35,118.58	

This claim amends and supercedes the previous claim dated 4/5/2004.  
Current Annual Interest Rates by Tax Type: Personal Income - 6%  
Liability Type Descriptions: ACT - Actual Return Filed

Marlene Gershtler

" B "



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I, Michael G. Louis, certify that I am, and at all times during the  
(name)

service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made. I further certify that the service of this summons and a copy of the complaint was made \_\_\_\_\_

by: 1/5/05  
(date)

☒ Mail Service: Regular, first class United States mail, postage fully pre-paid, addressed to:

Marlene Centrella

New York State Department of Taxation and Finance-Bankruptcy Section

P.O. Box 5300- Albany, New York 12205-0300

☐ Personal Service: By leaving the process with defendant or with an officer or agent of defendant at:

☐ Residence Service: By leaving the process with the following adult at:

☐ Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

☐ Publication: The defendant was served as follows: [Describe briefly]

☐ State Law: The defendant was served pursuant to the laws of the State of \_\_\_\_\_,  
as follows: [Describe briefly] (name of state)

Under penalty of perjury, I declare that the foregoing is true and correct.

1/5/05

Date

Michael G. Louis

Signature

Michael G. Louis, Esquire

Print Name Michael G. Louis, Esquie

Business Address

17 W. Miner Street, P.O. Box 660

City  
West Chester

State  
PA

Zip  
19381